

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B05

PLR-104845-06

Date:

August 18, 2006

In Re:

LEGEND:

Utility =

Parent =

Authority =

City =

Site =

Agreement =

X =

Y =

Dear :

This letter responds to your letter, dated December 27, 2005, requesting a ruling under section 118 of the Internal Revenue Code.

FACTS

Utility is an investor owned publicly regulated utility and files a consolidated federal income tax return with Parent.

Authority owns, on behalf of City, Site. Authority plans to sell Site to developers pursuant to Agreement. City and developers plan to develop Site. The development will consist of a mix of single family homes, town homes, condominiums, and rental apartments, including low and moderate income housing units. As part of the development, two existing high pressure intrastate gas transportation pipelines on Site were relocated. The location of these gas transportation pipelines severely limited the development of Site. City paid Utility \$X for the relocation of the gas transportation pipelines plus a tax gross-up of \$Y.

There was no local low pressure service provided by the existing gas transportation pipelines to Site. The development will not connect directly to the relocated gas transportation pipelines. The development will connect to an existing regulator station outside the development. The existing regulator station has sufficient capacity to provide local low pressure service to the development. The regulator station is tied into both gas transportation pipelines.

City believes that the \$X payment is excluded from Utility's income under section 118 and that Utility should refund the tax gross-up of \$Y. City believes that the payment is not a contribution in aid of construction under section 118(b) because the provision and encouragement of the development of affordable housing by City is a public purpose of City.

LAW AND ANALYSIS

Section 61(a) and section 1.61-1 of the Income Tax Regulations provide that gross income means all income from whatever source derived, unless excluded by law. Section 118(a) provides that, in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer. Section 118(b), as amended by section 824(a) of the Tax Reform Act of 1986 (the Act), provides that for section 118(a) purposes, the term "contribution to the capital of the taxpayer" does not include any contribution in aid of construction (CIAC) or any other contribution as a customer or potential customer.

Before the Act, former section 118(b) allowed certain regulated public utilities to exclude from gross income as contributions to the capital of the corporation certain contributions made by a customer or potential customer in aid of construction. Section 824(a) of the Act repealed this special exclusion by amending section 118(b). The changes made by the Act apply to all contributions after that date. As a result of this change, CIACs are includable in gross income. Although not applicable, section 118 was subsequently amended by the Small Business Job Protection Act of 1996 to restore the benefits of the provisions repealed by the Act for regulated public utilities that provide water or sewage disposal service.

The House Ways and Means Committee Report for the Act explains that property, including money, is a CIAC (rather than a capital contribution) if it is transferred to provide or encourage the provision of services to or for the benefit of the person transferring the property. H.R. Rep. No. 426, 99th Cong., 1st Sess. 644 (1985), 1986-3 (Vol. 2) C.B. 644 (the House Report). A utility has received property to encourage the provision of services if the receipt of the property is a prerequisite to the provision of the services; if the receipt of the property results in the provision of services earlier than would have been the case had the property not been received; or if the receipt of the property otherwise causes the transferor to be favored in any way. Id. The House Report also states that the repeal of the special exclusion does not affect transfers of property that are not made in connection with the provision of services, including situations where it is clearly shown that the benefit of the public as a whole was the primary motivating factor in the transfers. Id.

Notice 87-82, 1987-2 C.B. 389, provides additional guidance. Notice 87-82 follows the language from the House Report and states that a payment received by a utility is not a CIAC if it does not reasonably relate to the provision of services by the utility to or for the benefit of the person making the payment, but rather relates to the benefit of the public at large. Notice 87-82 provides as an example of a payment benefiting the public at large a relocation payment received by a utility under a government program to place utility lines underground. In that situation, the relocation payment is not considered a CIAC where the relocation is undertaken for purposes of community aesthetics and public safety and does not directly benefit particular customers of the utility in their capacity as customers.

Site could not be developed as desired by City and the developers unless the two existing gas transportation pipelines were relocated. Consequently, the \$X paid by City to Utility for the relocation relates to the provision of services by Utility for the benefit of City.

CONCLUSION

Accordingly, based solely on the foregoing analysis and the representations made, we conclude that the payment made by City to Utility to relocate the gas transportation pipelines is a CIAC under section 118(b) included in Utility's gross income under section 61.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be filed with Parent's federal income tax return for the taxable year in which the payment is made.

In accordance with the power of attorney on file with this ruling request, a copy of this letter is being sent to Parent's authorized representative.

Sincerely,

SUSAN J. REAMAN
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
Copy of this letter
Copy for section 6110

cc: